

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #1	CCRB Case #: 201708677	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/15/2017 2:20 AM	Location of Incident: § 87(2)(b)	Precinct: 41	18 Mo. SOL 4/15/2019	EO SOL 4/15/2019	
Date/Time CV Reported Sun, 10/15/2017 4:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/19/2017 11:06 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Raymond Kwong	00000	932870	041 PCT
2. POM Michael Rothschild	31315	954300	041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Tine	16098	958123	041 PCT
2. POF Aine Reynolds	23718	963229	041 PCT
3. POM William Hernandez	13519	961817	041 PCT
4. SGT Gelvis Loraespinal	03358	948238	041 PCT
5. POM Sergey Pogosyan	24198	963215	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Rothschild	Force: Police Officer Michael Rothschild used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Michael Rothschild	Abuse: Police Officer Michael Rothschild threatened to arrest § 87(2)(b)	§ 87(2)(b)
C.LT Raymond Kwong	Abuse: Lieutenant Raymond Kwong forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)

Case Summary

On October 15, 2017, § 87(2)(b) filed this complaint with IAB on behalf of herself and her sister, § 87(2)(b). The case was forwarded to the CCRB on October 19, 2017 under log #17-40314.

On October 15, 2017 at approximately 2:20AM, § 87(2)(b) her friend § 87(2)(b) and her sister, § 87(2)(b) got in a physical altercation with a group of civilians in front of § 87(2)(b) in the Bronx. § 87(2)(b) was handcuffed by PO Michael Rothschild and PO Michael Tine, both of the 41st Precinct. After § 87(2)(b) was handcuffed, PO Rothschild allegedly grabbed § 87(2)(b)'s wrist and swung her against the front door of the building (**Allegation A: Force:** § 87(2)(g)). PO Rothschild allegedly told § 87(2)(b) "You'll be arrested for interference" (**Allegation B: Abuse of Authority:** § 87(2)(g)). § 87(2)(b) was forcibly removed to § 87(2)(b) (**Allegation C: Abuse of Authority:** § 87(2)(g)). Neither § 87(2)(b) nor § 87(2)(b) were summonsed or arrested in connection with this incident. Video was obtained from § 87(2)(b) but it did not capture any officer-civilian interactions due to the angle of the camera (Board Review 01).

Findings and Recommendations

Allegation A-Force: Police Officer Michael Rothschild used physical force against § 87(2)(b)

Allegation B-Abuse of Authority: Police Officer Michael Rothschild threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that after approximately two minutes of enduring physical blows from the civilians, five-six uniformed officers, including Lieutenant Raymond Kwong and PO Rothschild, arrived at the location (Board Review 02). § 87(2)(b) was handcuffed by an officer, although § 87(2)(b) did not recall who did this. When § 87(2)(b) was handcuffed and on the stairs, she was crying and yelling at the other civilians, who were still standing around. § 87(2)(b) went to the top of the stairs, grabbed § 87(2)(b)'s hair and tried to tie it so it was out of her face. § 87(2)(b) also covered § 87(2)(b)'s mouth with her hand to prevent her from screaming and "going crazy." No officer told her not to do this or issued her any instructions. PO Rothschild approached § 87(2)(b) from her right side and grabbed her right forearm, causing her to swing in the direction of the front door of the building; § 87(2)(b)'s back, left shoulder and upper right arm hit the door. PO Rothschild told § 87(2)(b) "You'll be arrested for interference." § 87(2)(b)'s arm was sore but she did not seek any medical attention for her arm.

§ 87(2)(b) was consistent with § 87(2)(b) in that when they arrived to the location, a group of unknown civilians started to verbally and physically attack them (Board Review 03). § 87(2)(b) testified that Lt. Kwong picked her up while she was on the ground with § 87(2)(b) and brought her to the stairs. § 87(2)(b) came to the stairs and tried to calm § 87(2)(b) down. § 87(2)(b) was crying, and "hysterical;" she was not able to calm down. While on the top of the stairs, § 87(2)(b) was trying to talk to one of the officers and "something happened there." § 87(2)(b) was looking out at the crowd and did not see any physical interaction between § 87(2)(b) and an officer. § 87(2)(b) believed something happened because she heard § 87(2)(b) say, "Was there need for that?"

The investigation was unable to obtain a statement from § 87(2)(b) (Board Review 04). While there were numerous civilians present at the time, none of them could be identified because

neither § 87(2)(b) nor § 87(2)(b) knew who they were. In addition, no one on scene was arrested or summonsed so there is no police documentation available to identify witnesses.

PO Rothschild noted in his memo book that § 87(2)(b) was obstructing governmental administration until she was told that she could be arrested (Board Review 05). PO Rothschild testified that at one point, although he did not recall if it was before or after § 87(2)(b) was handcuffed, § 87(2)(b) pushed him in the lower back (Board Review 06). This was while PO Rothschild was trying to verbally calm § 87(2)(b) down. PO Rothschild explained to § 87(2)(b) that he was trying to get § 87(2)(b) to calm down. PO Rothschild informed § 87(2)(b) that she could be arrested for obstructing governmental administration. § 87(2)(b) was committing OGA by physically trying to interfere with PO Rothschild's attempts to prevent § 87(2)(b) from harming herself. § 87(2)(b) stopped interfering after hearing that she could be arrested. PO Rothschild did not recall initiating any physical contact with § 87(2)(b). PO Rothschild never grabbed § 87(2)(b)'s arm and swung her against a door. § 87(2)(b) never complained of any pain.

PO Michael Tine, PO William Hernandez, and PO Sergey Pogosyan, who were all present for this portion of this incident, all stated that PO Rothschild did not take § 87(2)(b)'s arm and swing her against the front door of the building or otherwise use any physical force against her (Board Review 07, 08, 09).

PO Tine testified that while he and PO Rothschild were trying to handcuff § 87(2)(b), § 87(2)(b) leaned over PO Rothschild's shoulder. PO Rothschild told § 87(2)(b) that she could be arrested while she was leaning over his shoulder and blocking his attempt at handcuffing § 87(2)(b). § 87(2)(b) could have been arrested for OGA. PO Tine could not recall § 87(2)(b)'s response to being told she could be arrested.

PO Hernandez testified that § 87(2)(b) was not present at the time when § 87(2)(b) was handcuffed. PO Hernandez did not recall if PO Rothschild ever told § 87(2)(b) that she could be arrested. PO Hernandez did not see anything that § 87(2)(b) could have been arrested for.

PO Pogosyan stated that § 87(2)(b) was standing close to the officers while they were trying to handcuff § 87(2)(b) but he did not see her try to interfere with the officers. PO Pogosyan did not recall if PO Rothschild threatened to arrest § 87(2)(b) and he did not see anything § 87(2)(b) could have been arrested for.

Penal law 195.05 states that "a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law...by means of intimidation, physical force or interference" (Board Review 10). Patrol Guide 221.01 states that "force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life" (Board Review 11).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C-Abuse of Authority: Lieutenant Raymond Kwong forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) testified that prior to interacting with the officers, she had consumed two cups of Hennessy and Red Bull. On a scale of intoxication ranging from 1-10, § 87(2)(b) placed herself at a 5 or a 6. § 87(2)(b) has diagnosed bipolar disorder and takes medication for this illness; she was on medication (although she could not recall the pharmaceutical names of these drugs) at the time of this incident. § 87(2)(b) never physically resisted the officers but acknowledged yelling and cursing in their presence. § 87(2)(b) was yelling at her assailants, saying that they should be arrested and not her. § 87(2)(b) was also raising her voice toward the officers and told them that they should be arresting other people. § 87(2)(b) did not know when she was handcuffed and did not know who handcuffed her. § 87(2)(b) repeatedly stated during her CCRB interview that she was in shock at the time. § 87(2)(b) was crying, “hysterical”, and she was not able to calm down. When asked during a follow-up call, § 87(2)(b) stated that she did not threaten to kill anyone (Board Review 12).

§ 87(2)(b) stated that § 87(2)(b) “probably” consumed alcohol on this night. § 87(2)(b) was consistent with § 87(2)(b) in that § 87(2)(b) was yelling and crying. § 87(2)(b) put her hand on § 87(2)(b)'s mouth to prevent her from screaming and “going crazy.”

The ACR prepared for § 87(2)(b) states that she was yelling, screaming, and appeared to be under the influence of alcohol and that § 87(2)(b) was taking Seroquel (a medication for bipolar disorder) at the time of the incident (Board Review 13). § 87(2)(b) was unable to sign the authorization signature.

§ 87(2)(b)'s medical records from § 87(2)(b) noted that she was assessed as an immediate danger to herself and others due to her screaming, flailing arms, and threatening staff (Board Review 14). § 87(2)(b) also was found to have a blood alcohol level of .204, which is more than twice the legal limit to drive in the state of New York. § 87(2)(b) was sedated with Haldol and Ativan in the emergency room because she was “screaming, spitting, and kicking.”

Lt. Kwong was the first officer to arrive to the scene and testified that when he got there, § 87(2)(b) and § 87(2)(b) were fighting each other (Board Review 15). Lt. Kwong then called for additional units and did not interact with § 87(2)(b) and § 87(2)(b). Lt. Kwong tried to disperse the crowd that was there and did not see how officers interacted with § 87(2)(b). PO Rothschild later informed Lt. Kwong that an ambulance was coming because § 87(2)(b) was “irrational, aggressive, and wouldn’t comply with orders.” PO Rothschild explained all of this to Lt. Kwong while § 87(2)(b) was handcuffed and they were waiting for the ambulance. Lt. Kwong did not know who made the decision to call an ambulance for § 87(2)(b). No one asked

for Lt. Kwong's permission to call for an ambulance. No officer consulted with Lt. Kwong about the decision to call for an ambulance as they are not required to do so.

PO Rothschild and PO Tine both testified that they were the officers who had a conversation about removing § 87(2)(b) to the hospital and that they both agreed that § 87(2)(b) needed to be evaluated because she had a strong odor of alcohol on her breath and because she was not listening to numerous instructions to calm down. Neither officer could recall what § 87(2)(b) was screaming about. Neither officer consulted with a supervisor about the decision to remove § 87(2)(b) to the hospital.

PO Rothschild testified that § 87(2)(b) was taken to the hospital because she was intoxicated. § 87(2)(b) was "combative and not listening to commands." PO Rothschild testified that she was a danger to herself and others because she was not listening to commands and she was on the stairs and could have possibly fallen down the stairs. She was also pushing officers and they "could have easily [fallen] off the stairs."

PO Tine continually stated that § 87(2)(b) was a danger to herself because she was behaving in a belligerent manner although he could not say why she was being belligerent save for the exception of refusing to stop yelling at others.

PO Aine Reynolds, PO Rothschild's partner, stated that when she arrived to the scene, § 87(2)(b) was standing on top of the steps to the building (Board Review 16). § 87(2)(b) was flailing her arms and kicking her legs. § 87(2)(b) was threatening to "kill everybody." PO Reynolds believed that if § 87(2)(b) was not taken to the hospital, she could have continued to fight with civilians on scene.

The AIDED report filled out by PO Reynolds indicated that § 87(2)(b) was under the influence of alcohol, spoke of harming herself or others, was attempting to inflict physical harm on others, and that she placed herself in a dangerous situation (Board Review 17).

Patrol Guide Procedure 221-13 defines an EDP as "a person who appears to be mentally ill or temporarily deranged and is conducting herself in a manner which a police officer reasonably believes is likely to result in serious injury to herself or others" (Board Review 18). The Patrol Guide indicates that someone determined to be an EDP must be forcibly removed to the hospital if they do not voluntarily agree to get treatment.

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) have been parties.
- PO Michael Rothschild has been a member of service for four years and has been a subject in one closed case involving three allegations, none of which were substantiated.
§ 87(2)(g)
- Lt. Raymond Kwong has been a member of service for 14 years and has been a subject in five previous CCRB complaints and six allegations, of which one was substantiated.
 - Case #200908490 involved one substantiated allegation of a frisk against Lt. Kwong. The Board recommended command discipline and the NYPD imposed instructions.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- Both § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- As of February 22, 2017, a notice of claim has not been filed in connection with this incident (Board Review 19).
- According to the Office of Court Administration (OCA), § 87(2)(b) and § 87(2)(b) have no history of convictions in New York City (Board Review 20).

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Squad Leader: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Reviewer: _____

Signature	Print Title & Name	Date
-----------	--------------------	------